

AMENDED IN ASSEMBLY JULY 14, 2009

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 1, 2009

SENATE BILL

No. 492

Introduced by Senator Maldonado
(Coauthors: Senators Ashburn, Cogdill, Cox, and Runner)
(Coauthor: Assembly Member Jeffries)

February 26, 2009

An act to amend Section 653b of the Penal Code, relating to loitering.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as amended, Maldonado. Loitering: criminal street gangs.

Under existing law, it is a misdemeanor for any person to loiter after being asked to leave, as specified, about any school or public place at or near which children attend or normally congregate. Existing law establishes enhanced misdemeanor penalties, including minimum penalties, for this crime if the person is required to register as a sex offender.

This bill would provide enhanced penalties for this crime if the person is required to register with the chief of police or sheriff for committing any of specified criminal street gang offenses. ~~The bill would require the court, if the court grants probation to a minor or adult in these circumstances, to impose upon the defendant or minor a condition prohibiting the defendant or minor from entering the grounds of a school without the express permission of the chief administrative officer of the school. The bill would allow the court to excuse a defendant or minor from this condition under certain circumstances.~~ Because the bill

would increase the penalties for an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 653b of the Penal Code is amended to
2 read:

3 653b. (a) Except as provided in subdivision (b) or (c), every
4 person who loiters about any school or public place at or near
5 which children attend or normally congregate and who remains at
6 any school or public place at or near which children attend or
7 normally congregate, or who reenters or comes upon a school or
8 place within 72 hours, after being asked to leave by the chief
9 administrative official of that school or, in the absence of the chief
10 administrative official, the person acting as the chief administrative
11 official, or by a member of the security patrol of the school district
12 who has been given authorization, in writing, by the chief
13 administrative official of that school to act as his or her agent in
14 performing this duty, or a city police officer, or sheriff or deputy
15 sheriff, or Department of the California Highway Patrol peace
16 officer is a vagrant, and is punishable by a fine of not exceeding
17 one thousand dollars (\$1,000) or by imprisonment in a county jail
18 for *a period* not exceeding six months, or by both that fine and
19 imprisonment.

20 (b) Every person required to register as a sex offender who
21 violates subdivision (a) shall be punished as follows:

22 (1) Upon a first conviction, by a fine not exceeding two thousand
23 dollars (\$2,000), by imprisonment in a county jail for a period of
24 not more than six months, or by both that fine and imprisonment.

25 (2) If the defendant has been previously convicted once of a
26 violation of this section or former Section 653g, by imprisonment
27 in a county jail for a period of not less than 10 days or more than
28 six months, or by both imprisonment and a fine of not exceeding

1 two thousand dollars (\$2,000), and shall not be released on
2 probation, parole, or any other basis until he or she has served at
3 least 10 days.

4 (3) If the defendant has been previously convicted two or more
5 times of a violation of this section or former Section 653g, by
6 imprisonment in a county jail for a period of not less than 90 days
7 or more than six months, or by both imprisonment and a fine of
8 not exceeding two thousand dollars (\$2,000), and shall not be
9 released on probation, parole, or any other basis until he or she
10 has served at least 90 days.

11 (c) ~~(1)~~ Any person required to register with the chief of police
12 or sheriff pursuant to Section 186.30 who violates subdivision (a)
13 shall be punished as follows:

14 ~~(A)~~

15 (1) Upon first conviction, by a fine not exceeding one thousand
16 dollars (\$1,000), by imprisonment in a county jail for a period of
17 not more than one year, or by both that fine and imprisonment.

18 ~~(B)~~

19 (2) Upon a second conviction, by a fine not exceeding two
20 thousand dollars (\$2,000), by imprisonment in a county jail for a
21 period of not more than one year, or by both that fine and
22 imprisonment. The court shall consider a period of imprisonment
23 of at least 10 days.

24 ~~(C)~~

25 (3) If the defendant has been previously convicted two or more
26 times, by a fine not exceeding two thousand dollars (\$2,000), by
27 imprisonment in a county jail for a period of not more than one
28 year, or by both that fine and imprisonment. The court shall
29 consider a period of imprisonment of at least 90 days.

30 ~~(2) If the court grants probation to a defendant who was~~
31 ~~convicted of, or a minor as to whom a petition was sustained for,~~
32 ~~a violation of subdivision (a) and the defendant or minor is a person~~
33 ~~required to register with the chief of police or sheriff pursuant to~~
34 ~~Section 186.30, the court shall impose a condition prohibiting the~~
35 ~~defendant from entering the grounds of a school without the express~~
36 ~~permission of the chief administrative officer of the school. The~~
37 ~~court may excuse a defendant or minor from this condition in the~~
38 ~~unusual case in which the interests of justice warrant this excuse.~~
39 ~~The court shall state the reasons on the record for excusing a~~
40 ~~defendant or minor from this condition.~~

1 (d) As used in this section, “loiter” means to delay, to linger,
2 or to idle about a school or public place without lawful business
3 for being present.

4 (e) Nothing in this section shall preclude or prohibit prosecution
5 under any other provision of law.

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.